

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Resident Insurance
Producer's License of Cheryl Ann
Barnes

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter was scheduled originally for hearing on January 4, 2007. The Respondent, Cheryl Ann Barnes, retained counsel, and counsel was granted time to prepare for this matter prior to a Prehearing/Status Conference, which was conducted on March 22, 2007. At that Conference, counsel for the Respondent reiterated his request (made originally on December 22, 2006) on behalf of his client for a mediation of the matter, and counsel for the Department agreed again to consult with officials at the Department of Commerce as to whether mediation of the case was agreeable to the Department. A hearing date of June 14, 2007 was set in the event the matter did not resolve itself by way of an alternative dispute resolution. Prior to that date, counsel for the Respondent/Licensee withdrew from the case, and the Licensee subsequently represented herself.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce. Cheryl Ann Barnes, 8742 Ridge Ponds Court, Victoria, MN 55386, represents herself in this matter.

Subsequent to withdrawal from the case by her counsel, the Licensee agreed not to contest the allegations in the Statement of Charges, but to reserve her right to submit argument to the Commissioner as to the appropriate discipline or sanction.

STATEMENT OF THE ISSUE

Whether disciplinary action, including a continuance of the Summary Suspension that has been in place against the Respondent/Licensee since December 1, 2006, should be taken against the Respondent for demonstrating untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(4), for failing to appear at the Department as ordered, in violation of Minn. Stat. §§ 45.027, subd. 1a and 60K.43, subd. 1(2), for committing fraudulent, dishonest and

untrustworthy practices in violation of Minn. Stat. § 60K.43, subds. 1(7) and 1(8), for forging another person's name to an application for insurance in violation of Minn. Stat. § 60K.43, subd. 1(10), for engaging in unfair and deceptive acts and practices in violation of Minn. Stat. § 72A.19, subd. 1, and for failing to observe a high standard of commercial honor and just and equitable principles of trade in her conduct in violation of Minn. R. 2795.1000?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Prior to the commencement of the scheduled hearing on June 14, 2007, the Licensee/Respondent stipulated, during a telephone conversation with the Administrative Law Judge and the Assistant Attorney General representing the Department of Commerce, that she would not contest the allegations in the Statement of Charges. She specifically reserved her right to submit an argument to the Commissioner as to the appropriate sanction or discipline.

2. In September, 2006, the Department investigated a complaint filed on behalf of an 89-year-old woman, who maintained that, without the consent of herself or her children (who have her power of attorney), the Licensee enrolled the complainant in a Humana Gold Choice Plan and forged her signature on the application form. When questioned about that incident by representatives of her agency, the Licensee admitted to fabricating the application as well as other applications.

3. In connection with a separate complaint, the Department's investigation revealed that the complainant had enrolled his mother, a vulnerable adult, in Humana's prescription drug plan. The Licensee/Respondent later enrolled that vulnerable adult in the Humana Gold Choice Plan without the request or consent of the vulnerable adult or anyone on her behalf.

4. On October 27, 2006, the Department sent the Licensee/Respondent an Order to Appear, requiring her to appear at the Department for questioning on November 2, 2006. She later telephoned the Department to reschedule the appearance to November 9, 2006. She failed to appear and did not contact the Department to provide any explanation for not appearing.

5. Pursuant to the Stipulation of the parties, the allegations contained in the Statement of Charges, including any allegations not noted specifically in this Report, are taken as true and incorporated by reference into the Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against the Licensee/Respondent under Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Department has fulfilled all procedural requirements, and this matter is properly before the Administrative Law Judge and the Commissioner.

3. Pursuant to the Stipulation of the parties, the Respondent has demonstrated untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(4), she has committed fraudulent, dishonest and untrustworthy practices in violation of Minn. Stat. § 60K.43, subds. 1(7) and 1(8), she has forged another person's name to an application for insurance in violation of Minn. Stat. § 60K.43, subd. 1(10), she has engaged in unfair and deceptive acts and practices in violation of Minn. Stat. § 72A.19, subd. 1, she has failed to observe a high standard of commercial honor and just and equitable principles of trade in her conduct in violation of Minn. R. 2795.1000, and has violated Minn. Stat. §§ 45.027, subd. 1a and 60K.43, subd. 1(2) by failing to appear at the Department as ordered.

4. Disciplinary action against the Licensee/Respondent is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner take appropriate disciplinary action against the license of Cheryl Ann Barnes.

Dated: October 4, 2007

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: No hearing.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, ATTN: Sue Jensen, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 within 10 days to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

As noted in the body of this Report, the Licensee/Respondent has stipulated not to contest the allegations in the Statement of Charges issued in this matter. In that connection, she reserved her right to submit argument to the Commissioner as to the appropriate discipline or sanction to be imposed. It is assumed that she will contact the Commissioner, or whoever is designated by the Commissioner to consider the matter, during the ten-day exception period noted above. Pursuant to the Stipulation that reserves to the Respondent an opportunity to argue the appropriate level of discipline, the ALJ has made no Conclusion or Recommendation regarding whether the Summary Suspension of Ms. Barnes's license should remain in effect during the pendency of this matter, until the issuance of a final decision.

R. C. L.